

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

NATIONAL LAWYERS GUILD, SAN
FRANCISCO BAY AREA CHAPTER,

Plaintiff and Appellant,

v.

CITY OF HAYWARD, ET AL.,

Defendants and Respondents.

No. S252445

(Court of Appeal No. A149328)

(Super. Ct. No. RG15785743)

AFTER A DECISION OF COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION THREE

**RESPONDENTS' MOTION TO TAKE JUDICAL NOTICE;
MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS
OF JUSTIN NISHIOKA AND JENNY LILLGE; [PROPOSED] ORDER**

Michael S. Lawson (SB #048172)
City Attorney
*Justin Nishioka (SB #278207)
Assistant City Attorney
City of Hayward
777 B Street, 4th Floor
Hayward, CA 94541-5007
Tel: (510) 583-4458
Fax: (510) 583-3660
Justin.Nishioka@hayward-ca.gov

Attorneys for Defendants
and Respondents City of Hayward, Adam
Perez, and Diane Urban.

MOTION TO TAKE JUDICIAL NOTICE

Pursuant to California Evidence Code sections 452 and 459 and Rule 8.252 of the California Rules of Court, Defendants-Respondents City of Hayward, et al., hereby request that the Court take judicial notice of "Exhibit B" to the declaration of Justin Nishioka, which is the complete legislative history for Government Code section 6253.9.

This motion is based upon the attached memorandum of points and authorities, the attached declarations of Justin Nishioka and Jenny Lillge, the accompanying exhibit(s), and the record on appeal.

DATED: 4/1/2019

Respectfully Submitted,
MICHAEL S. LAWSON, City Attorney

By: _____ /s/Justin Nishioka _____
Justin Nishioka, Assistant City Attorney
Attorneys for Appellant

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

The matter at issue is one of first impression. The Court of Appeal appropriately took judicial notice of select documents within the legislative history of Government Code section 6253.9 (“§6253.9”) to better discern the meaning of the provisions therein.

The legislative history of §6253.9 was compiled by Jenny Lillge, an attorney at Legislative Intent Service who “specializes in researching the history and intent of legislation.” (Declaration of Jenny Lillge, Exhibit “A” of Declaration of Justin Nishioka.) However, the entire legislative history of §6253.9 was not provided to the Court of Appeal. Instead, the City of Hayward (the “City”) provided documents primarily pertaining to Assembly Bill 2799 of 2000 (Stats.2000, ch. 982, § 2, p. 7142) (“AB 2799”) and did not provide all the legislative documents compiled by Ms. Lillge. The reason was because §6253.9 was adopted by AB 2799, and part of the legislative history provided by Ms. Lillge was dedicated to documents concerned AB 2799’s precursor bills, Assembly Bill 1099 of 1999 (“AB 1099”), Senate Bill 1065 of 1999 (“SB 1065”) and Assembly Bill 179 of 1997 (“AB 179”). The Court of Appeal took judicial notice of the partial legislative history it was provided, that being records primarily concerning AB 2799 (though a small portion of the judicially noticed record includes materials concerning AB 1099, SB 1065, and AB 179).

The City now seeks for the entire legislative history to be judicially noticed, including all records pertaining to AB 2799 (introduced by Assembly Member Shelly with principal coauthor Senator Bowen) and its precursor bills AB 1099 (Assembly Member Shelly), SB 1065 (Senator Bowen) and AB 179 (Senator Bowen). All these bills were originally drafted with the purpose of allowing greater public access to records in an electronic format. (Legislative History, p.

1130, Volume IV [“LH:1130”]) AB 1099 was blended with SB 1065 to create AB 2799. (LH:170, Volume I) The inclusion of the precursor bills provides the Court the entire picture of the history of §6253.9’s adoption into law. Having additional information as to the meaning behind §6253.9’s language, and why AB 2799 survived the legislative gauntlet when prior bills failed, is instructive and important, and a necessary consideration for this Court if it determines §6253.9’s language is ambiguous.

As the legislative record shows for all these bills, electronic documents are different than paper records. Body-camera video is different. Compiling and redacting paper records is often an easier process than finding and editing records from an electronic database. Because of this distinction between paper and electronic records, and the pressures placed on the Legislature to adopt provisions addressing this distinction, the Legislature formulated §6253.9(b) and enacted AB 2799 into law. Requiring a requester to pay for the production costs associated with compiling and extracting exempt material from electronic records, as well as the programming necessary to produce those records, was a necessary accommodation needed to pass the legislation.

An in-depth analysis of the legislative history, particularly records regarding precursor bills SB 1065 and AB 179, show us why two bills failed and why one ultimately succeeded. It shows us how building a new law is complicated, sometimes requiring significant concession, sometimes requiring giving something up to receive more, such as shifting costs to a requester in certain circumstances to ultimately garner wider access.

The City respectfully requests that this Court take judicial notice of the entire legislative history provided by Ms. Lillge for §6253.9, including all documents related to AB 1099, SB 1065 and AB 179.

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LEGAL DISCUSSION

Section 452(c) of the Evidence Code provides that a trial court may take judicial notice of “[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” (*People v. Snyder* (2000) 22 Cal.4th 304, 309, fn. 5; *See, Delaney v. Baker* (1999) 20 Cal.4th 23, 30 & fn. 3.) Evidence Code section 459 grants appellate courts the same right and authority to take judicial notice as the trial courts. (*See, Elsner v. Uveges* (2004) 34 Cal.4th 915, 921 & fn. 10; *See also, People v. Connor* (2004) 115 Cal.App.4th 669, 681 & fn. 3.) Thus, “[i]n an effort to discern legislative intent, an appellate court may take judicial notice of the various legislative materials, including committee reports, underlying the enactment of a statute.” (*Hale v. Southern Cal. IPA Medical Group, Inc.* (2001) 86 Cal.App.4th 919, 927.)

Here, the City requests that the Court take judicial notice of the entire legislative history for §6253.9, including AB 2799 which enacted §6253.9 in the year 2000, as well as AB 2799’s precursor bills AB 1099, SB 1065 and AB 179. These legislative documents were obtained from Jenny Lillge of the Legislative Intent Service. Ms. Lillge is an attorney licensed to practice in California, State Bar No. 265046, and specializes in researching the history and intent of legislation. (Declaration of Jenny Lillge, attached in “Exhibit A” of the Declaration of Justin Nishioka.)

The legislative history documents, which are attached within “Exhibit B” to the declaration of Justin Nishioka, are as follows:

SENATE BILL 1065 OF 1999:

1. All versions of Senate Bill 1065 (Bowen-1999);
2. Procedural history of Senate Bill 1065 from the 1999-2000 *Senate Final History*;

3. Analyses of Senate Bill 1065 prepared for the Senate Judiciary Committee;
4. Material from the legislative bill file of the Office of Senate Committee on Judiciary on Senate Bill 1065;
5. Analysis of Senate Bill 1065 prepared for the Senate Committee on Appropriations;
6. Material from the Senate bill file of the Senate Committee on Appropriations on Senate Bill 1065 including material from the Assembly bill file on the Governor's Veto on Assembly Bill 179, analyses of Assembly Bill 179 and Senate Bill 1065, and Senate Analysis of Assembly Bill 1099;
7. Third Reading analysis of Senate Bill 1065 prepared by the Office of Senate Floor Analyses;
8. Material from the legislative bill file of the Office of Senate Floor Analyses on Senate Bill 1065, including Department of Finance Bill analysis on Senate Bill 1065;
9. Analysis of Senate Bill 1065 prepared by the Assembly Committee on Governmental Organization, including material from the legislative bill file of the State Board of Equalization analysis on Senate Bill 1065;
10. Material from the legislative bill file of the Assembly Committee on Governmental Organization on Senate Bill 1065;
11. Analysis of Senate Bill 1065 prepared for the Assembly Committee on Appropriations;
12. Material from the legislative bill file of the Assembly Committee on Appropriations on Senate Bill 1065;
13. Third Reading analysis of Senate Bill 1065 prepared by Office of Senate Floor Analyses;
14. Material from the legislative bill file of the Senate Judiciary Committee and Assembly Republican Caucus on Senate Bill 1065;
15. Veto analysis of Senate Bill 1065 prepared by the Office of Senate Floor Analyses

16. Material from the legislative bill file of the Assembly Member Debra Bowen on Senate Bill 1065, including material from the California State Assembly file to the members of the California Assembly on Assembly Bill 179;
17. Governor's Veto file of Senate Bill 1065;
18. Material from the legislative bill file of the State and Consumer Services Agency on Senate Bill 1065;
19. All versions of Assembly Bill 1099 (Shelly- 1099)
20. Procedural history of Assembly Bill 1099 from 1999-2000 *Assembly Final History*.

The types of legislative documents of which the City seeks judicial notice are routinely considered by appellate courts when evaluating the background and purpose of specific bills and statutes. (*See, e.g., Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 174 [cited various portions of AB 2799 when analyzing Government Code §6254.9 as it relates to GIS-formatted mapping databases]; *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 544, fn. 4, 548 [taking judicial notice of legislative history including Senate Committee on Judiciary report]; *Eisner v. Uveges* (2004) 34 Cal.4th 915, 934 &fn. 19 [approving of judicial notice of enrolled bill reports to determine legislative intent]; *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 377 [citing various legislative materials, including legislative author letter to governor and enrolled bill memorandum]; *Mercy Hospital & Medical Ctr. v. Farmers Ins. Group of Companies* (1997) 15 Cal.4th 213, 222 [citing various legislative materials, including legislative author letter to governor]; *In re Raymond E.* (2002) 97 Cal.App.4th 613, 617, fn. 27 [taking judicial notice of various bill analyses, including Senate Judicial Committee analysis]; *Quartermann v. Kefauver* (1997) 55 Cal.App. 4th 1366, 1373, [reviewing amendments to language of bill and noting that “[t]he evolution of legislation from its introduction to its final form may provide some insight into the underlying legislative intent . . . Statements by the sponsor of legislation may be

instructive . . . as are legislative committee reports on the proposed legislation”]; *People v. Superior Court (Memorial Medical Center)* (1991) 234 Cal.App.3d 363, 380-381 [relying upon documents contained in a legislative committee file]; *Wiley v. Southern Pacific Trans. Co.* (1990) 220 Cal.App.3d 177, 192 fn. 8 [relying on amended versions of a bill].)

The appellate courts are split on whether a party requesting judicial notice of selected legislative materials should submit the entire legislative history, or only the materials actually cited in the requesting party’s brief. (*Compare, Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 29 [stating practice of submitting entire legislative history “must stop”] with, *People v. Valenzuela* (2001) 92 Cal.App.4th 768, 776, fn. 4 [“the entire legislative history should have been submitted to us.”]; *Drouet v. Superior Court* (2003) 31 Cal.4th 583, 598 [criticizing reliance on “isolate fragments” of legislative history].)

Despite the split in authority, and given the posture of this case, the City seeks judicial notice of all documents provided by Ms. Lillge pertaining to §6253.9. SB 1065 and AB 179 do not specifically concern the §6253.9 cost-bearing provision, but they do address a matter of importance which is showing why AB 2799’s precursor legislation failed. In order to understand §6253.9, and the compromises required to get the bill signed into law, it is necessary to look backwards, the past giving useful insight into the legislation eventually enacted.

The City offers to provide the legislative materials as a supplement to its previously judicially noticed documents, providing Ms. Lillge’s legislative record in its entirety. Numbering for this legislative history in which the City presently seeks judicial notice begins after the previously judicially noticed legislative records, with the newly introduced records beginning on page 1153 and continuing thereafter (the City requests judicial notice for pages 1153 through 1724, while pages 1-1152 were previously judicially noticed by the Court of Appeal).

CONCLUSION

For the foregoing reasons, the City respectfully requests that this Court take judicial notice of "Exhibit B" which is attached to the Declaration of Justin Nishioka.

DATED: 4/1/2019

Respectfully Submitted,
MICHAEL S. LAWSON, City Attorney

By: /s/Justin Nishioka
Justin Nishioka, Assistant City Attorney
Attorneys for Defendants-Respondents

DECLARATION OF JUSTIN NISHIOKA

I, Justin Nishioka, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and an attorney with the Hayward City Attorney's Office, counsel of record for all defendants and respondents on this appeal.

2. For the convenience of the Court in understanding the context of the specific documents for which judicial notice is sought, the declaration of Jenny Lillge is attached as "Exhibit A" along with the Confirmation of Research Completeness provided by Legislative Intent Service.

3. Attached to the City's Request for Judicial Notice and identified as "Exhibit B" are true and correct copies of the entire set of documents that the City received from the Legislative Intent Service regarding §6253.9, including all documents pertaining to AB 2799, AB 1099, SB 1065, and AB 179.

All legislative records from page 1 through page 1152 were judicially noticed by the Court of Appeal. Pages 1153 through the end of the record (page 1724) are the newly introduced legislative records and complete the entire legislative history for §6253.9.

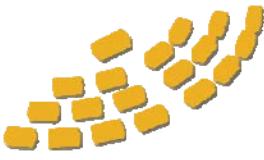
The legislative history is provided in six volumes: Volume I (pages 1-300), Volume II (pages 301-600), Volume III (pages 601-900), Volume IV (pages 901-1200), Volume V (pages 1201-1500), and Volume VI (pages 1501-1724).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 1, 2019 in Hayward, California.



Justin Nishioka

EXHIBIT A



LEGISLATIVE INTENT SERVICE, INC.

712 Main Street, Suite 200, Woodland, CA 95695
(800) 666-1917 • Fax (530) 668-5866 • www.legintent.com

DECLARATION OF JENNY S. LILLGE

I, Jenny S. Lillge, declare:

I am an attorney licensed to practice in California, State Bar No. 265046, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the enactment of Assembly Bill 2799. Assembly Bill 2799 was approved by the Legislature and was enacted as Chapter 982 of the Statutes of 2000.

The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on Assembly Bill 2799 of 2000. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc. In compiling this collection, the staff of Legislative Intent Service, Inc. operated under directions to locate and obtain all available material on the bill.

EXHIBIT A - ASSEMBLY BILL 2799 OF 2000:

1. All versions of Assembly Bill 2799 (Shelley-2000);
2. Procedural history of Assembly Bill 2799 from the 1999-2000 *Assembly Final History*;
3. Three analyses of Assembly Bill 2799 prepared for the Assembly Committee on Governmental Organization;
4. Material from the legislative bill file of the Assembly Committee on Governmental Organization on Assembly Bill 2799;
5. Analysis of Assembly Bill 2799 prepared for the Assembly Committee on Appropriations;
6. Material from the legislative bill file of the Assembly Committee on Appropriations on Assembly Bill 2799;

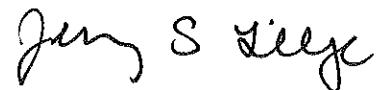
7. Third Reading analysis of Assembly Bill 2799 prepared by the Assembly Committee on Governmental Organization;
8. Material from the legislative bill file of the Assembly Republican Caucus on Assembly Bill 2799;
9. Analysis of Assembly Bill 2799 prepared for the Senate Committee on Judiciary;
10. Material from the legislative bill file of the Senate Committee on Judiciary on Assembly Bill 2799;
11. Material from the legislative bill file of the Senate Committee on Appropriations on Assembly Bill 2799;
12. Third Reading analysis of Assembly Bill 2799 prepared by the Office of Senate Floor Analyses;
13. Material from the legislative bill file of the Office of Senate Floor Analyses on Assembly Bill 2799;
14. Material from the legislative bill file of the Senate Republican Office of Policy on Assembly Bill 2799;
15. Concurrence in Senate Amendments analysis of Assembly Bill 2799 prepared by the Assembly Committee on Governmental Organization;
16. Material from the legislative bill file of Assembly Member Kevin Shelley on Assembly Bill 2799;
17. Post-enrollment documents regarding Assembly Bill 2799;
18. Press Release #L00:208 issued by the Office of the Governor on October 1, 2000 to announce that Assembly Bill 2799 had been signed;
19. Excerpt regarding Assembly Bill 2799 from the *2000 Digest of Significant Legislation*, prepared by the Office of Senate Floor Analyses, November 2000.
20. Excerpt regarding Assembly Bill 2799 from the *Journal of the Assembly* for the 1999-2000 Regular Session;
21. Material from the legislative bill file of the Department of Finance on Assembly Bill 2799;
22. Material from the legislative bill file of the State and Consumer Services Agency on Assembly Bill 2799.

EXHIBIT B - SENATE BILL 1065 OF 1999

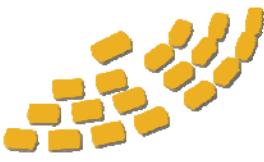
1. All versions of Senate Bill 1065 (Bowen-1999);
2. Procedural history of Senate Bill 1065 from the 1999-2000 *Senate Final History*;
3. Analysis of Senate Bill 1065 prepared for the Senate Committee on Judiciary;
4. Material from the legislative bill file of the Senate Committee on Judiciary on Senate Bill 1065;
5. Analysis of Senate Bill 1065 prepared for the Senate Committee on Appropriations;
6. Material from the legislative bill file of the Senate Committee on Appropriations on Senate Bill 1065;

7. Third Reading analysis of Senate Bill 1065 prepared by the Office of Senate Floor Analyses;
8. Material from the legislative bill file of the Office of Senate Floor Analyses on Senate Bill 1065;
9. Analysis of Senate Bill 1065 prepared by the Assembly Committee on Governmental Organization;
10. Material from the legislative bill file of the Assembly Committee on Governmental Organization on Senate Bill 1065;
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14. Material from the legislative bill file of the Assembly Republican Caucus on Senate Bill 1065;
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16. Material from the legislative bill file of the Assembly Member Debra Bowen on Senate Bill 1065;
17. Governor's Veto file of Senate Bill 1065;
18. Material from the legislative bill file of the State and Consumer Services Agency on Senate Bill 1065;
19. All versions of Assembly Bill 1099 (Shelley-1999)
20. Procedural history of Assembly Bill 1099 from the 1999-2000 *Assembly Final History*.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 2nd day of December, 2016 at Woodland, California.



JENNY S. LILLGE



LEGISLATIVE INTENT SERVICE, INC.

712 Main Street, Suite 200, Woodland, CA 95695
(800) 666-1917 • Fax (530) 668-5866 • www.legintent.com

CONFIRMATION OF RESEARCH COMPLETENESS

Re: **ASSEMBLY BILL 2799 (SHELLEY-2000)
CHAPTER 982, STATUTES OF 2000**

Our File No.: 35062

You have asked us to confirm that the online store research of Assembly Bill 2799 of 2000 that you purchased on November 1, 2016 is complete. In our over 40 years of researching legislative history, we have learned that collecting legislative documents can be fluid. For example, files from an office, such as the committee or the author, can evolve to contain more or less than that originally acquired once deposited in a public depository. In our review of our research regarding Assembly Bill 2799, we determined that we provided everything available on this bill.

Related Legislation. We determined that Senate Bill 1065 of 1999 was related to Assembly Bill 2799 of 2000. ([See Exhibit B](#)) Governor Gray Davis vetoed this bill on October 10, 1999. ([See Exhibit B, #2](#)) The veto message included:

This is well-intentioned legislation. However, many of the state's computer systems do not yet have the capacity to implement the provisions of this bill.

([See Exhibit B, #17, document PE-12](#))

We have also provided the bill and final history for Assembly Bill 1099 of 1999, which also related to computerized data. ([See Exhibit B, #19 and #20](#)) Please let us know if you would like additional research on this bill.

At this point in time, the research on this bill which you purchased earlier is confirmed complete.

We appreciate the opportunity to provide this assistance and hope that these efforts will be of value to you.

EXHIBIT B

(Contents of Exhibit B provided separately in Volumes I through VI)

[PROPOSED] ORDER

IT IS HEREBY ORDERED that, pursuant to the pertinent provisions of Evidence Code Sections 452 and 459 and Rule 8.252 of the California Rules of Court, judicial notice is hereby taken of Exhibit B attached to the declaration of Justin Nishioka submitted by the Defendants and Respondents City of Hayward, et al.

DATED: _____

FOR THE COURT,

PROOF OF SERVICE

I am employed in the County of Alameda, State of California. I am over the age of 18 years and not a party to the within action. My business address is 777 B Street, 4th Floor, Hayward, California 94541-5007.

On April 1, 2019, I served the document(s) described as:

- **MOTION TO TAKE JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF JUSTIN NISHIOKA AND EXHIBITS: A. DECLARATION OF JENNY LILLGE AND B. FULL LEGISLATIVE HISTORY OF §6253.9; [PROPOSED] ORDER**

on the interested parties in this action as follows:

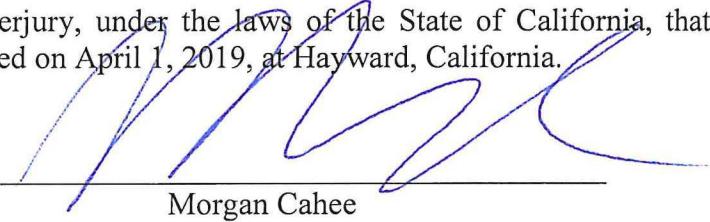
Amitai Schwartz
Law Offices of Amitai Schwartz
2000 Powell Street, Suite 1286
Emeryville, CA 94608
Email: Amitai@schwartzlaw.com

Alan Schlosser
American Civil Liberties Union
Foundation of Northern California, Inc.
39 Drumm Street
San Francisco, CA 94111
Email: Aschlosser@aclunc.org

[X] (BY ELECTRONIC MAIL) Pursuant to the parties stipulation for email service, I served the above documents to the email listed in the service caption above.

[X] (STATE) Under the laws of the State of California.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on April 1, 2019, at Hayward, California.



Morgan Cahee